IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6225 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRESIDENT OF KOLAVADA JUTH KELAVANI MANDAL

Versus

RANCHHODBHAI AMBALAL PATEL

Appearance:

1. Special Civil Application No. 6225 of 2001

MR JAYESH A DAVE for Petitioner No. 1-2

MR ANAND L SHARMA for Respondent No. 1

RULE SERVED for Respondent No. 2

Ms.Falguni Patel for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/02/2004

ORAL JUDGEMENT

1. The President of Kolavada Juth Kelavani Mandal has approached this Court by filing this petition being aggrieved of a judgment and order dated 4th May, 2001 of the Primary Education Tribunal in Application no.31/2000. The Honourable Tribunal was pleased to order that the school is bound to pay the applicant-respondent herein the salaries till 31st May, 2001 (the day on which he retired on reaching the age of superannuation.) The Honourable Tribunal is pleased to hold that the order terminating the services of the petitioner dated 31-5-2000 is not legal as the same was issued without following the procedure laid down by law, and therefore, the same is quashed. The petitioner-school is directed to pay the salaries to the applicant-respondent herein treating him to be on duty till 31st May, 2001.

2. The facts of the case are that the petitioner was appointed as a teacher on temporary basis on 25-6-1965. In the year 1991 the respondent no.1 became the Principal of the school. In the year 1999, the Government issued a notification fixing the fees leviable, and in protest thereof, the parents of the students held a meeting on 3-10-1999 and expressed their inability to pay the fees and withdrew the students from the school, and therefore, Standards V and VI came to be closed. The case of the petitioner is that the resolution to that effect was sent to the Government. On 21st February, 2000, the petitioner issued notice to the respondent no.1 for discharging him from duty as there was no work. This notice was challenged by the respondent no.1 by filing application before the Gujarat Primary Education Tribunal being Application no.31/2000 which came to be partly allowed by the Honourable Tribunal by its judgment and order dated 4th May,2001, which is under challenge in this petition.

3. Mr. Jayesh A.Dave, learned Advocate appearing for the petitioners herein submitted that the judgment and order of the Honourable Tribunal is not in accordance with the law, and the same is required to be quashed and set aside by this Court mainly on the ground that the services of the respondent no.1 were required to be terminated as there was no work, and that the petitioner no.1 had already written letter to the respondent no.2 to grant approval to the closure of the classes, and therefore, the services of the respondent no.1 were legally terminated, and no relief could have been granted by the Honourable Tribunal to the respondent no.1.

4. Mr. Dave, learned Advocate heavily relied upon a

judgment of this Court in the matter of HIMANSHU S. RAJYAGURU & ORS. V. STATE OF GUJARAT (1996 (3) G.L.R. 46). The learned Advocate submitted that when the services of a teacher are terminated on account of closure of the institution due to depletion of students, as there was no work available, and necessary permission was obtained from the authorities, the termination cannot be said to be contrary to law and the same cannot be interfered with. The learned Advocate submitted that in the present case, the notice to the respondent no.1 was issued on 21-2-2000 for discharging him from duty as there is no work, and order of termination was passed on 31-5-2000 and before that letter dated 9-5-2000, was written by the petitioners to the respondent no.2 to grant approval to the closure of the classes, and therefore, the termination is required to be held to be valid in view of the aforesaid judgment of this Honourable Court. In the case which is relied upon by Mr. Dave, permission from Director of Employment and Training was sought for to close down the institution on account of depletion in the strength of students, and that permission was granted vide letter dated 12th October, 1995, and as it transpires from paragraph 4 of the judgment, the services of the petitioners of that petition were terminated subsequent thereto. It is in light of these facts, the Court was pleased to hold that:

> "This Court held both the action of alleged closure of the institution and termination of services of the petitioners to be valid or justified. When the institution was closed validly after taking the necessary permission from the Director of Technical Education, the petitioners' claim to continue the institution is not justified. When there is no work available at the institution, the petitioners cannot be allowed to continue in service and their services have been rightly terminated. The Counsel for the petitioners contended that the termination of services of the petitioners has been made without taking the prior approval of the Education Department. It has further been contended that the permission to close down the classes cannot be read as permission to terminate the services of the petitioners. ... ..."

4.1. In the case on hand, the facts are otherwise. As is set out hereinabove, the respondent no.1 was served with a notice on 21-2-2000, a letter which is written by

the petitioners to the respondent no.2 seeking approval of the closure of the classes is dated 9-5-2000, and the services of the respondent are terminated with effect from 31-5-2000 and the permission to close the school was granted on 9-11-2000. Therefore, the termination of the services of the respondent is prior to the grant of permission to close the school but factually the classes were closed with effect from June, 2000. Mr. Dave, learned Advocate could not point out any similar provision like Section 40B (2) in the matter of closure of school or reduction in the total number of classes, as is found in Schedule "F" of the Bombay Primary Education Rules, 1949. In Clause (b) of subsection (1) of Section 40B (2) there is a deeming fiction to the effect that when the administrative officer does not communicate to the Manager of the school in writing his approval or disapproval of the action proposed within a period of 45 days from the date of receipt by the administrative officer of such proposal, the approval is deemed to have been granted.

5. In fact the legislature while providing the model conditions of employment of staff in private schools in State of Gujarat in Schedule "F" to the Bombay Primary Education Rules, 1949 has provided for closure of school or reduction in the total number of classes in condition no.5, and it is made obligatory on the management of recognized private primary schools not to effect any reduction in the total number of classes in a school or close down the school WITHOUT THE PRIOR PERMISSION IN WRITING OF THE GOVERNMENT. FOR THIS PURPOSE, THE MANAGEMENT THEREOF TO MAKE AN APPLICATION TO THE AUTHORISED OFFICER ATLEAST SIX MONTHS BEFORE THE DATE FROM WHICH IT INTENDS TO REDUCE THE NUMBER OF CLASSES OR CLOSE DOWN THE SCHOOL. ... ... "

6. It is also required to be noted that no deeming fiction like subsection (2) of Section 40B is made in this condition. Taking this legal position into consideration, this Court is of the opinion that the judgment and order of the Honourable Tribunal is found to be in accordance with law, and it does not warrant any interference at the hands of this Court. As discussed hereinabove, the decision of this Court which is sought to be relied upon by Mr. Dave has no application to the facts of the case on hand because here the management had not taken permission to close down the school, before terminating the service of the petitioner and therefore, without there being such permission for closing down the school, they could not have terminated the services of the respondent no.1 herein by the impugned order,

7. In view of the aforesaid discussion, the present petition is dismissed with no order as to costs.

7.1 At this juncture, Mr. Sharma learned Advocate appearing for the respondent no.1 requested that the respondent no.1 has already retired from services with effect from 31-3-2001 on reaching the age of superannuation, and that he is not paid full retiral dues on account of pendency of this matter, hence, the petitioners be directed to expedite the payment of hisretiral dues. The request being reasonable the same is granted. The petitioners are directed to expedite the payment of retiral dues of the respondent no.1 and shall see to it that the same are paid latest by 15th June, 2004.

(Ravi R.Tripathi,J.)

stanley-rrt.